IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1792 OF 2003

Raichand C. Jain Applicant

versus

Surendra Prasad Respondent

ALONG WITH
CRIMINAL APPLICATION NO.1793 OF 2003

Parasmal C. Jain Applicant

versus

Surendra Prasad Respondent

Shri Amit Desai with Shri Ganesh Gole for Applicants.

Shri D.N.Salvi for respondent no.1.

Shri S.S.Pednekar, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 22.12.2005

DATE OF PRONOUNCING THE JUDGEMENT : 21.02.2006

PC :

1. Rule. Returnable forthwith. Shri Salvi appearing for respondent no.1 waives notice. By consent heard finally.

2. In these applications the questions arising for consideration are common, arguments are identical and therefore, they can be conveniently disposed of by a common judgement.

3. These criminal applications invoke Section 482 of the Code of Criminal Procedure for quashing and setting aside the orders passed by the Sessions Court and the Metropolitan Magistrate taking a view that exoneration of the applicants in adjudication proceedings, would not be a bar for prosecuting them for offences punishable under the Foreign Exchange Regulation Act ("FERA" for short). In other words, although, in adjudication proceedings the issue of liability to pay duty/tax and dependent upon it imposition of penalty may also have been considered, but that would not permit quashing and/or closing of criminal prosecution for offences alleged under the same Enactment under which duties have been demanded and penalties purported to be imposed. Are these proceedings identical in nature or one is independent of the other, is therefore, the core issue. If they are not, still, exoneration in one would mean continuation of the latter an abuse of the

process of the Court, in the facts and circumstances of this case.

4. The factual background is as under. Some time in June 1993 information came to be received by the Department of Enforcement that applicant in Criminal Application No.1793 of 2003 was engaged, on large scale, in the making of compensatory payments. Pursuant thereto on 25th June 1993 his residential premises and office premises were searched and certain documents were seized from both premises. On 25th June 1993 and 26th June 1993 his statement came to be recorded by the Officer at their office, in which Shri Jain made certain admissions that he was importing pharmaceutical drugs from one Anand of Singapore, whom he has met at Lugano through Preetam Khurana. In the statement it was further stated that he was giving foreign exchange to the said Anand or his men for the purchase of the imported pharmaceutical drugs and the said foreign exchange was purchased from Raichand K. Jain @ Babulal Jain - applicant in Criminal Application No.1792 of 2003.

5. On 26th June 1993 premises of M/s.Mangaldeep Collection, i.e. Raichand Jain were searched on

the basis of statement of Parasmal Jain dated 25th June 1993. Statement of Raichand Jain was recorded on the same day. On this day Parasmal and Raichand Jain came to be arrested. Both retracted their statements before the learned Chief Metropolitan Magistrate on 27th June 1993. Statements of other persons were also recorded by the Department. Concerned persons were issued show cause notices for the alleged violation of provisions of Foreign Exchange Regulation Act, 1973 ("FERA" for short). All of them replied to the said show cause notices. In due course the Special Director exonerated them by order dated 18th August 2000.

6. Criminal Case No.16/C.W./99 came to be filed in the Court of Chief Metropolitan Magistrate, Esplanade, Mumbai by Shri Surendra Prasad, Chief Enforcement Officer for offences punishable under sections 56(1)(I) R/W Sections 9(1)(d), 8(1) and 8(2) of the FERA..

7. On 25th January 2002 discharge application came to be filed by the applicants, which was rejected by the order passed by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai. Shri Parasmal Jain and Raichand Jain filed Criminal

Revision Application No.213 of 2002 and 269l of 2002 respectively in the Court of Sessions, Greater Mumbai. On 1st January 2003 the learned Sessions Judge, Greater Mumbai rejected the criminal revision applications. The orders passed by learned Chief Metropolitan Magistrate and learned Sessions Judge are subject matter of challenge in these applications u/s 482 of Cr.P.C..

8. Shri Desai - learned Counsel appearing for the applicants submits that the Courts below were in error in dismissing the applications for discharge. He submits that the Department had issued show cause notices to the applicants and the Special Director of Enforcement, after being satisfied with the reply/explanation of the applicants to the show cause notices, observed in his order that all charges in the show cause notices fail. He invites my attention to the findings recorded by the Special Director and then submits that the basis of the criminal case is also the same. He submits that identical allegations are levelled in the criminal case. In these circumstances, when the applicants are exonerated by the adjudicating authority, then on same set of allegations, parallel criminal

proceedings cannot be continued. Such criminal proceedings and/or continuation thereof is an abuse of process of law and, therefore, he submits that this is a fit case where this Court should exercise it’s inherent powers and quash the criminal proceedings. Shri Desai relies upon the following decisions :-

1) (1982)2-SCC-543 Uttam Chand and Ors. Vs. Income Tax Officer, Central Circle, Amritsar;

2) (1984)Supp SCC-437 P.Jayappan Vs. S.K.Perumal, First Income Tax Officer, Tuticorin;

3) (1992)3-SCC-178 K.T.M.S.Mohd. and anr. Vs. Union of India;

4) 1995 Supp.(2)-scc-724 G.L.Didwania and anr. Vs. Income Tax Officer and another.

5) (1996)9-SCC-1 P.S.Rajya Vs. State of Bihar.

6) 1996(84)ELT-404 ITC Ltd. Vs. Collector of Central Excise.

7) 2003-Cr.L.J.-1698 Dy.Chief Controller of Imports and Exports Vs. Roshanlal Agarwal;

8) 2004(2)-SCC-731 K.C.Builders and another Vs. The Assistant Commissioner of Income Tax.

9) 1993-Cr.L.J. (Mah)-88 Mohan Rewachand Mankaal Vs. L.D.Arora.

10) 1996-Cr.L.J.449 M/s.Shastri Sales Corpn. Vs. ITO.

11. 1996(1)-All.M.R.-444 Jamnadas

Madhavji Vs. D.C.Shreedhar.

12. 1998(6)-LJ-394 Ramniklal Premchand Mehta Vs. Union of India.

13. 2004-ALL MR (Cri)-2129 Ushanes Nrupendra Mehta Vs. The State of Maharashtra and Razak, Asstt. Collector of Customs.

14. An order passed in Criminal Revision Application No.153 of 1993 dated 01.09.2005 (Coram : A.S.Oka, J.)

He further relies on various judgements of Delhi High Court, M.P. High Court, Madras High Court etc..

9. The thrust of Shri Desai's submissions is that pendency of an adjudication proceeding is not a bar to the initiation or maintainability of a criminal prosecution in respect of same set of facts/transactions, but, in the event depart-mental proceedings resulting in exoneration of the noticee or dropping of the proceedings, then the decision of the departmental authorities will have to taken in to consideration by the Criminal Court. He submits that this rule is based on good conscience and equity. It may be, according to Shri Desai, that standard of proof may not be identical in both cases, but if, in the departmental proceedings, where a lesser degree of proof is required, the department has not succeeded, then allowing it to proceed with the criminal case is an abuse of the process of the

Court.

10. On the other hand, Shri Salvi appearing for respondents supports the order under challenge. He submits that on the basis of evidence of violation of provisions of FERA, show cause notices were issued. It was alleged that there is contravention of provisions of FERA to the tune of crores of rupees. It is true that the Special Director of Enforcement has exonerated both applicants vide his order dated 18th August 2000. After the orders of exoneration, the applicants' preferred applications for discharge in the criminal cases. The applications have rightly been rejected by the Courts below after observing that criminal proceedings and adjudication proceedings are two separate proceedings. They are not dependent upon each other. He submits that adjudication is for the ascertainment of loss in money. The criminal prosecution is for offences which have been alleged. The punishment is not identical. The procedure in adjudication and in trying a criminal case, is not identical either. These are two independent powers. In these circumstances, according to Shri Salvi, the judgements relied upon by Shri Desai are not

applicable. Shri Salvi invites my attention to Section 51 of the FERA and submits that it is for the purposes of adjudging penalty. He submits that under section 18 of the Act, a provision is made for payment of exported goods. He invites my attention to the provisions of sub section 3 of Section 18 and submits that under section 50 penalty is leviable for contravention of the provisions of the Act other than Sections 13, 18(1)(a), 18-A and 19(1)(a) of the same. He submits that as far as these provisions are concerned, no penalty can be levied. However, such contravention is punishable as an offence u/s 56 of the Act, and therefore, the submissions of applicants should not be accepted.

11. Shri Salvi places reliance upon a decision of Supreme Court reported in AIR-1953-SC-325 (Maqbool Hussain Vs. State of Bombay). He also relies upon the decisions reported in AIR-1959-SC-375 (Thomas Dana Vs. State of Punjab), AIR-1970-SC-962 (Asst. Collector of Customs Bombay Vs. L.R.Melwani, 1999-Cr.L.J. -2970 (Anz Grindlays Bank Bombay Vs. Directorate of Enforcement, Bombay). For all these reasons, he submits that the applications be dismissed.

12. With the assistance of Shri Desai and Shri Salvi I have perused the orders passed by the Special Director of Enforcement, Ministry of Finance, Government of India as also orders of the learned Chief Metropolitan Magistrate and learned Sessions Judge. It is not disputed that the applicants are being prosecuted on a complaint filed by the Chief Enforcement Officer alleging offences under section 56(1) R/W Sections 9(1)(a), 9(1)(c), 9(1)(d) and Section 8(1) as well as Section 8(2) of the FERA.. They filed applications for discharge after the order of the Special Director of Enforcement exonerating them of the charges levelled in the show cause notices. It is also not disputed that ground on which discharge is sought, is that in view of their exoneration by the Tribunal constituted under FERA in adjudication proceedings, now, on same/identical charges, they cannot be prosecuted in a criminal case. It is clear that applications for discharge were opposed on the ground that these proceedings are independent of each other.

13. The Courts below have observed that proceedings are independent in nature. The order passed by the adjudicating authority is not

binding on a Criminal Court. The forums have to arrive at independent conclusions on the basis of materials placed. In coming to this conclusion, reliance is placed on a decision of this Court reported in 1999-Cr.L.J.-2907 (ANZ Grindlays Bank Bombay Vs. Directorate of Enforcement Bombay).

14. The learned Chief Metropolitan Magistrate after perusing the order passed by the Tribunal concluded that the said order exonerating the applicants on the ground of inadmissibility of the statement of Parasmal Jain, is not correct in law. The learned Metropolitan Magistrate refers to a decision of the Supreme Court reported in 1974(2)-S.C.R.-107. In the opinion of the Chief Metropolitan Magistrate, the statement cannot be discarded at this stage, but it will be scrutinised at trial. Further view of the learned Chief Metropolitan Magistrate is that evidentiary value of a retracted statement is also an aspect which cannot be concluded at this stage. In his view, if there is further corroborating material, then it is not necessary that the retracted confession must be discarded either fully or partially. Thus, relying upon this Court’s judgement in ANZ Grindlays Bank, the Chief Metropolitan Magistrate has held that it is

premature to conclude, at this stage, that retracted statements cannot be relied upon. Application for discharge was dismissed.

15. The finding of the learned Metropolitan Magistrate was subject matter of challenge before the learned Sessions Judge and the learned Sessions Judge concluded that a decision of the Supreme Court reported in (1982)2-SCC-543 and the Division Bench decision of this Court referred to above lay down the principle that adjudication proceedings do not amount to prosecution and order passed therein does not amount to punishment.

16. In the opinion of learned Sessions Judge, judgements laying down the above principle, are under Customs Act or FERA. The under lying principle that two proceedings are not identical, cannot be brushed aside. Holding so, he dismissed the revision applications.

17. In 2004-All.M.R.(Cri.)-2129 (Ushanes Nrupendra Mehta Vs. State of Maharashtra & anr.) a learned Single Judge of this Court had an occasion to consider some what similar controversy. The learned Judge after noticing

Supreme Court decisions in the field, some of which have been relied upon by Shri Desai before me, observed thus :-

> 18. It appears from the above judgements that though it is true that generally, if a person is fully exonerated in the adjudication proceedings, a prosecution based on the same evidence and on the same charges is liable to be quashed, no hard and fast rules can be laid down in that behalf. In a given case where adjudication proceedings are finally concluded and the result thereof is in favour of the accused, the prosecution may have to be dropped. The possibility of success in an adjudication proceeding can be no ground for quashing the prosecution. There may be a case where the accused may be charged with grave offences under the IPC apart from those under the Customs Act or the Income Tax Act or the like. In that case, the prosecution may still have to go on.
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> 19. Mr.Desai, however, contended that even where a person is charged for offences under the IPC, if he is exonerated in the adjudication proceedings, the prosecution will have to be quashed. In this connection, he relied on the judgement of the Delhi High Court in Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi, AIR-2003-SC-2545. In my opinion, the facts of that case are entirely different. In that case, the Gujarat Cancer Society (for short "the GCS") was accused of having evaded the customs duty. During the pendency of the adjudication proceedings, Kar Vivad Samadhan, 1998 Scheme (for short, "the said Scheme") was launched. Under the said Scheme, whoever took benefit of it was granted immunity from prosecution for offences under the Customs Act. The GCS took the benefit of the said Scheme. There was a full and final settlement of the tax arrears. However, a case was

> registered against it for offences under section 120-B read with section 420 of IPC. A petition was filed in the Delhi High Court praying that the said complaint be quashed. The said petition was dismissed. The petition travelled up to the Supreme Court. The Supreme Court, after relying on its judgement in Smt.Sushila Rani Vs. Commissioner of Income Tax and another, AIR-2002-SC-823, held that if an assessee takes the option under the said Scheme, he obtains immediate immunity under any proceeding under any and all laws in force. The Supreme Court, therefore, held that the proceedings initiated against GCS under Section 120-B read with section 420 of the IPC are liable to be quashed. In my opinion, the proceedings were quashed because under the said Scheme the petitioners therein were granted immunity against prosecution. The ratio of that case will, therefore, have to be confined to its own facts. Depending on the nature of the allegations, the seriousness of the charges and other attendant circumstances, in a given case, though a person is exonerated in adjudication proceedings, the prosecution may still have to go on."

18. In the present case the applicants were served with five show cause notices. The five show cause notices were served after their premises searched, documents seized and statements recorded. The charge is that they violated the abovementioned provisions of FERA.. Certain payments were made/foreign exchange sold without complying with the provisions of FERA as also without permission from the Reserve Bank of India. The adjudicating authority has, upon

consideration of the entire materials including replies of the applicants, held thus :-

> 27. Now coming to the charge u/s 9(1)(c) of FERA, 1973 in the SCN-I, wherein it is alleged that Shri Parasmal Jain had acknowledged a debt of US$ 320822 in favour of Shri Anand of Singapore, a person resident outside India, against pharmaceutical drugs/ raw materials purchased from Shri Anand, which were smuggled to India, the said charge is primarily based on the entries appearing in page 5 of bunch 'D' of the documents seized from Shri Parasmal Jain and his statement. As already discussed earlier, the entries appearing in the said documents and the statement of Shri Parasmal Jain are not corroborated at all by independent evidence. Moreover, except the retracted statement of Shri Parasmal Jain, there is no evidence to prove that the said Shri Anand is a resident of Singapore. Finally, the ingredients to prove a charge u/s 9(1)(c) ibid. viz. That there should be a debt and that there should be acknowledgement of debt and that such an acknowledgement must give a right to the non-resident to recover such debt are not fulfilled in this case. As such, the charge u/s 9(1)(c) ibid. alleged on SCN-I does not stand and must fail.
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> 28. In the SCN-II, it is alleged that Shri Parasmal and Sanjiv Khurana had entered into a transaction which provided for the conversation of US$ 185000 into Indian currency at the rate of Rs.35 per dollar and accordingly these persons are alleged to have contravened the provisions of sec. 8(1) and 8(2) idbi. As already discussed earlier, Shri Khurana in his statement has denied to have sold goods worth Rs.65 or Rs.70 lakhs to Shri Parasmal. According to Shri Khurana he had sold goods worth Rs.8 to 9 lakhs only to Shri Parasmal. Thus, even if it is proved that Shri Parasmal

had purchased good worth US$ 185000 from Shri Khurana and that the former had agreed to pay the latter the said amount in Indian currency at the rate of Rs.35 per dollar, the said transaction is only of local purchase/local sale and will not amount to 'entering into a transaction which provided for the conversion of US $ 185000 at the rate of Rs.35 per dollar' as alleged in the SCN. Even otherwise, it has already been found that the statements of Shri Parasmal and Shri Khurana and the documents in question do not corroborate each other. In these circumstances, the charges u/s.8(1) and 8(2) ibid. alleged in SCN-II against Shri Parasmal and Shri Sanjiv Khurana obviously do not sustain.

29. In the SCN No.III Shri Parasmal is alleged to have made payment of Rs.2,57,000 to Shri Randhir Jain on the instructions of aforementioned Shri Anand and Shri Franco Sartori who are indicated to be persons resident outside India, in violation of sec.9(1)(d) ibid. for receiving the said payment. As already discussed in the earlier part of this order the relevant entry in the seized document i.e. page 5 of bunch 'D' of the document seized from Shri Parasmal and his statement are not corroborated by the statement of shri Randhir Jain. Further, there is nothing on record to indicate these persons being non resident except the retracted statement of Shri Parasmal Jain voluntariness of which has been found to be doubtful. Therefore the charges u/s 9(1)(d) and 9(1)(b) ibid. alleged in this SCN-III against Shri Parasmal and Randhir Jain respectively would also fail.

30. Now coming to SCN-IV, it is alleged that Shri Parasmal purchased pharmaceutical goods valued at Rs.43,19,93,230 from Shri Anand of Singapore, purchased US$ equivalent to the said amount at rates ranging from Rs.33.80 to Rs.35 from Shri Babulal @ Raichand Jain in contravention of u/s.8(1) and 8(2) ibid. for selling the said amount of foreign exchange to Shri

Parasmal. The amount of Rs.43,19,93,230 is arrived at on the basis of the statement of Shri Parasmal saying that the total transactions between him and Shri Anand would amount to Rs.45 crores. From this amount, an amount of Rs.1,12,28,770 (being equivalent to US$ 3,20,822 @ 35 per dollar, which is subject matter of SCN-I) has been deducted to arrive at the figures of Rs.43,19,93,230 alleged in this SCN (i.e. SCN-IV). There is no documentary evidence either seized from Shri Parasmal or Shri Babulal or otherwise in support of this amount of foreign exchange alleged to have been purchased from Shri Babulal. The statements of Shri Parasmal and Babulal in this respect are vague and not specific. Moreover these statements have also been retracted and found to be lacking in voluntariness. In these circumstances, the charges u/s 8(1) and 8(2) ibid. alleged in SCN-IV against Shri Parasmal and Shri Babulal @ Raichand Jain would fail.

31. The charge alleged in SCN-V is that Shri Parasmal made payment of foreign exchange equivalent to Rs.43,19,93,230 to Shri Anand, allegedly a resident of Singapore in contravention of u/s 9(1)(a) idib. While dealing with SCN No.IV, it has already been found that the charge of purchasing foreign exchange valued at Rs.43,19,93,230 from Shri Babulal @ Raichand Jain is not proved. When the charge of purchasing the foreign exchange is not proved, then the charge of making payment of the said amount would automatically fail. Moreover the allegation that Shri Anand is a person resident outside India, has also not been proved conclusively. In these circumstances, the charge u/s 9(1)(a) ibid. alleged in SCN-V against Shri Parasmal Jain also fails."

Thus, the Special Director concluded that all the charges alleged in the five show cause notices in

question fail.

19. It is pertinent to note that the Special Director has referred to not just the fact that the statements recorded were retracted but also that there is no corroboration available to support the admission in the same. The statements are not corroborated also by the contents of the documents relied upon. It is not disputed before me that C.C.No.16/CW/1999 which is pending on the file of the Chief Metropolitan Magistrate, Esplanade, Mumbai is alleging offences punishable u/ss.56(1) R/W Sections 9(1)(a) to 9(1)(c) and 8(1) and 8(2) of the FERA.. The violation/contravention of the above provisions is also subject matter of the show cause notices. It is true that power to adjudicate with regard to imposition of penalty is distinct from that of the criminal court trying an accused and punishing him. However, the question is, if the basis of the charges is the same and when the order of exoneration in adjudication proceedings is conclusive, then whether any useful purpose will be served by allowing continuation of the criminal proceedings. The Supreme Court in P.Jayappan Vs. S.K.Perumal, First Income Tax Officer, Tuticorin

reported in 149 I.T.R. 696 has observed thus :-

> "At the outset it has to be stated that there is no provision in law which provide that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. Section 279 of the Act provides that a person shall not be proceeded against for an offence punishable under s.276C or s.277 of the Act except at the instance of the Commissioner. It further provides that a person shall not be proceeded against for an offence punishable under those provisions in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub s.(1) of s.271 has been reduced or waived by an order under s.273A. The Commissioner has the power either before or after the institution of proceedings to compound any such offence. In this case it is not claimed that the Commissioner has not initiated the proceedings for instituting the complaints. No other legal bar for the institution of the proceedings is urged except stating that in the event of the petitioner being exonerated in the reassessment proceedings, the prosecutions may have to be dropped. It is true that, as observed by this Court in Uttam Chand v. ITO (1982) 133 ITR 909, the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but that decision is no authority for the proposition that no proceedings can be initiated at all under s.276C and s.277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal

> proceedings under s.276C and s.277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it otherwise there is a danger of contention being advanced that whenever an assessee or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act, that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in criminal court."

The same view has been reiterated in subsequent decisions of the Supreme Court. It is true that a Division Bench of this Court in ANZ Grindlays Bank Vs. Directorate of Enforcement, Bombay has observed thus :-

> 42. Section 68 of the Act of 1973, it is contended by Sarvashree Venugopal and Chinoy, has no application to the penalty proceeding under Section 50 read with Section 51 of the Act, 1973. Section 68 as caption indicates, deals with the offences by a Company. As such, Section 68 cannot be invoked for the levy of penalty on the persons indicated by therein. We find considerable force in this submission."

20. However, as has been stated above, it is not as if both proceedings cannot go on. The nature of the proceedings has also been noted and the difference spelt out in the Supreme Court decision referred to above. It is equally true that at the stage where the criminal proceedings are today, namely, framing of charge, it cannot be said that their continuance further is impermissible in law. However, it is also well settled that if the continuation of the criminal proceedings after final conclusion of adjudication proceedings is an abuse of process of the Court, then certainly powers u/s 482 of Cr.P.C. can be exercised. Precisely this has been done in the case of U.N.Mehta by a learned Single Judge of this Court. There the charges were under the FERA.. In that case, adjudication proceedings were in favour of the applicant before this Court. The Department did not carry the matter further and allowed the order of the Special Director to gain finality. In these circumstances, after noticing the judgements referred to above, the learned Single Judge has quashed the criminal proceedings. The proceedings have been quashed after noticing the

fact that the Department has accepted the finding that the petitioner before this Court has not admitted to transfer of the foreign currency. In doing so, the learned Single Judge has referred to a decision rendered by Delhi High Court to this effect that once the Department does not succeed in proving the charge when the degree of proof is not as rigorous as criminal trial, then an attempt to foist criminal law, when, the degree of proof is more strict cannot be understood.

21. I have reproduced the findings of the Special Director exonerating the applicants in some what details. The same charges are being levelled in the instant criminal case. Further, offences under Indian Penal Code or other laws have not been alleged by the prosecution. Dealings and transactions are identical. The sections, violation of which is complained of, are also identical. The materials produced have been considered at length and the adjudication authority after referring to them as also to the retracted statements has rendered the above reproduced conclusions.

22. In the light of the above, in my view,

ordinarily, I must proceed to quash the criminal proceedings. However, my attention is invited by Shri Salvi to Section 56(1) of the FERA which reads thus :-

> "56. Offences and prosecutions :-
>
> (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act (other than Section 13, clause (a) of sub-section (1) of Section 18, Section 18-A, clause (a) of sub section (1) of Section 19, sub section (2) of Section 44 and Sections 57 and 58, or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable,-
>
> (i) in the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine;
>
> Provided that the court may, for any adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months."

He also invites my attention to Sections 51 and 71 which confer power to adjudicate. In his submission, if there is a contravention of any provisions of this Act, then penalties can be imposed u/s 50 and that power is expressly kept out of purview of Section 56 which deals with

offence and prosecutions. He submits that words "without prejudice to any award of penalty by the adjudicating officer under this Act" appearing in Section 56(1) make the intention of the Legislature absolutely clear. He submits that these provisions have not been noticed by the learned Single Judge so also she has failed to notice Rule 2(2) of the FERA Appellate Tribunal Rules. The said judgement, therefore, is not laying down the correct law, according to Shri Salvi. It is per incuriam because the above mentioned statutory provisions have not been noticed, rather they have been ignored.

23. In my view, this larger controversy posed before me need not be considered in the facts and circumstances of this case. Independently of this judgement I have reproduced the factual material in this case. I have reproduced the observations and findings of the Special Director. Further, my attention is also invited to another judgement of Supreme Court reported in (2004)2-SCC-731 (K.C.Builders and another Vs. The Asstt. Commissioner of Income Tax) wherein the Supreme Court in the context of a prosecution under Income Tax Act has observed that it’s earlier judgement in G.L.Didwania Vs. ITO {1995

Supp.(2)-SCC-724} can be taken assistance of. This judgement and other judgements of the Hon'ble Supreme Court have been followed by the learned Single Judge. It is that aspect of the matter, namely, reliance upon same materials in both proceedings which has been taken assistance of by the learned Judge. If identical materials are relied upon in both proceedings to prove the charges, then, exoneration in one, would definitely have a bearing on continuation of the other.

24. It is not the case of Shri Salvi that in exercise of inherent powers of this Court the reliefs prayed for cannot be granted. He does not dispute that provisions of FERA apart, in exercise of such powers this Court can quash the criminal proceedings if their continuation amounts to an abuse of the process of the Court. Further, he does not dispute that they can be exercised to secure ends of justice. Of course, these powers are to be sparingly exercised. A case must be made out for exercise of the same. In my view, applicants have made out such a case. It is not as if materials other than those before the Adjudicating Authority are available. The nature and degree of proof in a criminal trial

being strict and more rigorous, then, in the present facts and circumstances, allowing criminal prosecution to continue is not in the interest of justice. The scope of inherent powers of this Court is by now well settled. The principles in that behalf have been reiterated in a decision reported in AIR-2005-SC-9 (Zandu Pharma Ltd. Vs/ Md. Sharaful Haque and others). Para 8 of this decision reads thus :-

> "8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of

> justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

25. In the facts and circumstances of present case, no useful purpose will be served by allowing the criminal prosecution to continue on the same set of charges. Moreso, when the Department has accepted the finding of the Special Director. It is clear that the Courts

below have noticed the findings of the Adjudicating Authority. They could not have ignored them by holding that the Adjudicating Authority could not have straight away discarded the retracted statements. The prosecution having accepted the findings of the Special Director, all this discussion is wholly irrelevant. Thus, this is a fit case where this Court should exercise it’s inherent powers and quash the criminal proceedings. Rule is made absolute in each of these petitions in terms of prayer clause (a).

(S.C.DHARMADHIKARI, J.)